

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALEX CRUZ,

Defendant.

Case No. 1:97-CR-43-02

HON. RICHARD ALAN ENSLEN

**ORDER**

Defendant brings this Motion pursuant to Federal Rule of Civil Procedure 60(b)(6) and requests relief from this Court's Order denying Defendant's Motion for Federal Jurisdiction. (*See* Def.'s Mot. at 2, n.1; *see also* Dkt. Nos. 246 & 250.)<sup>1</sup>

Upon review, Defendant has not shown any basis for relief under Rule 60(b)(6). While subsection (b)(6) permits a district court to set aside an order for "any other reasons justifying relief . . .," it applies only in "exceptional or extraordinary circumstances which are not addressed in the first five numbered sections of the rule." *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990); *Hopper v. Euclid Manor Nursing Home, Inc.*, 867 F.2d 291, 294 (6th Cir. 1989). Relief pursuant to the rule is a discretionary matter as to which the district court is given broad equitable powers. *Olle*, 910 F.2d at 365. Defendant has failed to show "exceptional circumstances" warranting relief under Rule 60(b)(6). *Id.*; *See also Jinks v. AlliedSignal, Inc.*, 250 F.3d 381, 387

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<sup>1</sup>Defendant appealed the Order to the Sixth Circuit Court of Appeals. Defendant was denied a certificate of appealability by the Sixth Circuit and his appeal was dismissed. (*See* Dkt Nos. 260 & 274.) Defendant then petitioned the Supreme Court of the United States for a writ of *certiorari* regarding this issue. Defendant's petition was denied, as well as his request for rehearing. (*See* Dkt Nos. 282 & 283.)

(6th Cir. 2001); *Blue Diamond Coal. Co. v. Trustees of UMWA Combined Ben. Fund*, 249 F.3d 519, 524 (6th Cir. 2001).

Additionally, motions under subsection (6) may only be made within a “reasonable time,” which the Sixth Circuit has “determined is dependent upon the facts in a case, including length and circumstances of delay in filing, prejudice to opposing party by reason of the delay, and circumstances warranting equitable relief.” *In re: G.A.D., Inc.*, 340 F.3d 331, 334 (6th Cir. 2004) (citing *Olle*, 910 F.2d at 365). In the instant case, the Court determines that this motion was not made within a “reasonable time” because this Motion was made approximately seventeen months after the Order and after Defendant appealed the Order to the Sixth Circuit and the United States Supreme Court.

**THEREFORE, IT IS HEREBY ORDERED** that Defendant Alex Cruz’s Motion Pursuant to Rule 60(b) (Dkt. No. 284) is **DENIED**.

DATED in Kalamazoo, MI:  
June 3, 2005

/s/ Richard Alan Enslen  
RICHARD ALAN ENSLEN  
UNITED STATES DISTRICT JUDGE